

AN ACT
RELATING TO THE OFFICE OF THE LONG-TERM CARE RESIDENT'S
ADVOCATE, AND PROVIDING PENALTIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 135C.37, Code 2009, is amended to read as follows:

135C.37 Complaints alleging violations — confidentiality.

A person may request an inspection of a health care facility by filing with the department, resident advocate committee of the facility, or the office of long-term care resident's advocate as established pursuant to [section 231.42](#), a complaint of an alleged violation of applicable requirements of [this chapter](#) or the rules adopted pursuant to [this chapter](#). A person alleging abuse or neglect of a resident with a developmental disability or with mental illness may also file a complaint with the protection and advocacy agency designated pursuant to [section 135B.9](#) or [section 135C.2](#). A copy of a complaint filed with the resident advocate committee or the office of long-term care resident's advocate shall be forwarded to the department. The complaint shall state in a reasonably specific manner the basis of the complaint, and a statement of the nature of the complaint shall be delivered to the facility involved at the time of the inspection. The name of the person who files a complaint with the department, resident advocate committee, or the office of long-term care resident's advocate shall be kept confidential and shall not be subject to discovery, subpoena, or other means of legal compulsion for its release to a person other than department employees involved in the investigation of the complaint.

Sec. 2. Section 135C.38, subsection 2, paragraph d, Code

2009, is amended to read as follows:

d. A person who is dissatisfied with any aspect of the department's handling of the complaint may contact the office of long-term care resident's advocate, established pursuant to [section 231.42](#), or may contact the protection and advocacy agency designated pursuant to [section 135C.2](#) if the complaint relates to a resident with a developmental disability or a mental illness.

Sec. 3. Section 231.4, Code Supplement 2009, is amended by adding the following new subsections:

NEW SUBSECTION. 1A. "*Assisted living program*" means a program which provides assisted living as defined pursuant to section 231C.2 and which is certified under chapter 231C.

NEW SUBSECTION. 4A. "*Elder group home*" means elder group home as defined in section 231B.1 which is certified under chapter 231B.

NEW SUBSECTION. 7A. "*Legal representative*" means a tenant's legal representative as defined in section 231B.1 or 231C.2, or a guardian, conservator, or attorney in fact of a resident.

NEW SUBSECTION. 9A. "*Resident*" means a resident or tenant of a long-term care facility, assisted living program, or elder group home, excluding facilities licensed primarily to serve persons with mental retardation or mental illness.

Sec. 4. Section 231.4, subsection 10, Code Supplement 2009, is amended by striking the subsection.

Sec. 5. Section 231.23A, subsection 7, Code Supplement 2009, is amended to read as follows:

7. Administration relating to the office of long-term care resident's advocate ~~program~~ and training for resident advocate committees.

Sec. 6. Section 231.41, Code Supplement 2009, is amended to read as follows:

231.41 Purpose.

The purpose of this [subchapter](#) is to establish the office of long-term care resident's advocate ~~program operated by within~~ the ~~Iowa commission on aging department~~ in accordance with the requirements of the federal Act, and to adopt the supporting federal regulations and guidelines for its ~~implementation~~ operation. ~~In accordance with [chapter 17A](#), the commission on aging shall adopt and enforce rules for the implementation of this subchapter.~~

Sec. 7. Section 231.42, Code Supplement 2009, is amended by striking the section and inserting in lieu thereof the

following:

231.42 Office of long-term care resident's advocate — duties — penalties for violations.

1. *Office established.* The office of long-term care resident's advocate is established within the department, in accordance with section 712 of the federal Act, as codified at 42 U.S.C. § 3058g. The office shall consist of the state long-term care resident's advocate and any local long-term care resident's advocates.

2. *State long-term care resident's advocate.* The director of the department shall appoint the state long-term care resident's advocate who shall do all of the following:

a. Establish and implement a statewide confidential uniform reporting system for receiving, analyzing, referring, investigating, and resolving complaints about administrative actions and the health, safety, welfare, and rights of residents or tenants of long-term care facilities, assisted living programs, and elder group homes, excluding facilities licensed primarily to serve persons with mental retardation or mental illness.

b. Publicize the office of long-term care resident's advocate and provide information and education to consumers, the public, and other agencies about issues related to long-term care in Iowa.

c. Monitor the development and implementation of federal, state, and local laws, regulations, and policies that relate to long-term care in Iowa.

d. Annually report to the governor and general assembly on the activities of the office and make recommendations for improving the health, safety, welfare, and rights of residents and tenants of long-term care facilities, assisted living programs, and elder group homes.

e. Cooperate with persons and public or private agencies with regard to, and participate in, inquiries, meetings, or studies that may lead to improvements in the health, safety, welfare, and rights of residents and tenants and the functioning of long-term care facilities, assisted living programs, and elder group homes.

f. Recruit, train, educate, support, and monitor volunteers associated with the office.

3. *Local long-term care resident's advocates.* The local long-term care resident's advocates established pursuant to this section shall do all of the following:

a. Accept, investigate, verify, and work to resolve complaints, whether reported to or initiated by a long-term care resident's advocate, relating to any action or inaction that may adversely affect the health, safety, welfare, or rights of residents or tenants of a long-term care facility, assisted living program, or elder group home.

b. Provide information about long-term care, the rights of residents and tenants, payment sources for care, and selection of a long-term care facility, assisted living program, or elder group home to providers, consumers, family members, volunteers, and the public.

c. Make referrals to appropriate licensing, certifying, and enforcement agencies to assure appropriate investigation of abuse complaints and corrective actions.

d. Assist in the recruitment, training, education, support, and monitoring of volunteers associated with the office of the long-term care resident's advocate.

e. Make noncomplaint-related visits to long-term care facilities, assisted living programs, and elder group homes to observe daily routines, meals, and activities, and work to resolve complaints if any are identified during these visits.

4. Referrals of abuse, neglect, or exploitation.

a. If abuse, neglect, or exploitation of a resident or tenant of a long-term care facility, assisted living program, or elder group home is suspected, the state or a local long-term care resident's advocate shall, with the permission of the resident or tenant as applicable under federal law, make an immediate referral to the department of inspections and appeals or the department of human services as applicable, and to the appropriate law enforcement agency. The state or a local long-term care resident's advocate shall cooperate, if requested, with the department of inspections and appeals, department of human services, or any law enforcement agency pursuant to any investigation of such abuse, neglect, or exploitation.

b. If the department of inspections and appeals responds to a complaint referred by the state or a local long-term care resident's advocate against a long-term care facility, assisted living program, elder group home, or an employee of such entity, copies of related inspection reports, plans of correction, and notice of any citations and sanctions levied against the facility, program, or home shall be forwarded to the office of the long-term care resident's advocate.

5. *Access to facility, program, or home.* The state or a local long-term care resident's advocate or a trained volunteer may enter any long-term care facility, assisted living program, or elder group home at any time with or without prior notice or complaint and shall be granted access to residents and tenants at all times for the purpose of carrying out the duties specified in this section. As used in this section, "access" means the right to do all of the following:

a. Enter any long-term care facility, assisted living program, or elder group home and provide identification.

b. Seek consent to communicate privately and without restriction with any resident or tenant.

c. Communicate privately and without restriction with any resident, tenant, legal representative, or other representative who consents to communication.

d. Review the clinical or other records of a resident or tenant.

e. Observe all resident or tenant areas of a facility, program, or housing establishment except the living area of any resident or tenant who protests the observation.

6. *Access to medical and personal records.*

a. The state or a local long-term care resident's advocate shall have access to the medical and personal records of an individual who is a resident or tenant of a long-term care facility, assisted living program, or elder group home retained by the facility, program, or home.

b. Records may be reproduced by the state or a local long-term care resident's advocate.

c. Upon request of the state or a local long-term care resident's advocate, a long-term care facility, assisted living program, or elder group home shall provide the name, address, and telephone number of the legal representative or next of kin of any resident or tenant.

d. A long-term care facility, assisted living program, or elder group home or personnel of such a facility, program, or home who discloses records in compliance with this section and the procedures adopted pursuant to this section shall not be liable for such disclosure.

7. *Interference prohibited — penalties.*

a. An officer, owner, director, or employee of a long-term care facility, assisted living program, or elder group home who intentionally prevents, interferes with, or attempts to impede the work of the state or a local long-term care resident's

advocate is subject to a penalty imposed by the director of not more than one thousand five hundred dollars for each violation. If the director imposes a penalty for a violation under this paragraph, no other state agency shall impose a penalty for the same interference violation. Any moneys collected pursuant to this subsection shall be deposited in the general fund of the state.

b. The office of the long-term care resident's advocate shall adopt rules specifying procedures for notice and appeal of penalties imposed pursuant to this subsection.

c. The director, in consultation with the office of the long-term care resident's advocate, shall notify the county attorney of the county in which the long-term care facility, assisted living program, or elder group home is located, or the attorney general, of any violation of this subsection.

8. Retaliation prohibited — penalties. An officer, owner, director, or employee of a long-term care facility, assisted living program, or elder group home shall not retaliate against any person for having filed a complaint with, or provided information to, the state or a local long-term care resident's advocate. A person who retaliates or discriminates in violation of this subsection is guilty of a simple misdemeanor.

9. Change in operations. A long-term care facility, assisted living program, or elder group home shall inform the office of the long-term care resident's advocate in writing at least thirty days prior to any change in operations, programs, services, licensure, or certification that affects residents or tenants, including but not limited to the intention to close, decertify, or change ownership. In an emergency situation, or when a long-term care facility, assisted living program, or elder group home is evacuated, the department of inspections and appeals shall notify the office of the state long-term care resident's advocate.

10. Immunity. The state or a local long-term care resident's advocate or any representative of the office participating in the good faith performance of their official duties shall have immunity from any civil or criminal liability that otherwise might result by reason of taking, investigating, or pursuing a complaint under this section.

11. Confidentiality. Information relating to any complaint made to or investigation by the state or a local long-term care resident's advocate that discloses the identity of a complainant, resident, or tenant, or information related to

a resident's or tenant's personal or medical records, shall remain confidential except as follows:

a. If permission is granted by the director in consultation with the state long-term care resident's advocate.

b. If disclosure is authorized in writing by the complainant and the resident, tenant, or the individual's guardian or legal representative.

c. If disclosure is necessary for the provision of services to a resident or tenant, or the resident or tenant is unable to express written or oral consent.

d. If ordered by a court.

12. *Posting of state long-term care resident's advocate information.* Every long-term care facility, assisted living program, and elder group home shall post information in a prominent location that includes the name, address, and telephone number, and a brief description of the services provided by the office of the long-term care resident's advocate. The information posted shall be approved or provided by the office of the long-term care resident's advocate.

Sec. 8. Section 231.44, subsections 1 and 3, Code Supplement 2009, are amended to read as follows:

1. The resident advocate committee volunteer program is administered by the office of the long-term care resident's advocate program. The state and any local long-term care resident's advocate shall provide information, assistance, and support to resident advocate committee program volunteers to the extent possible. If funding becomes insufficient to process applications and new appointments to resident advocate committees can no longer be made, the director shall notify the director of the department of inspections and appeals. A health care facility shall not be found in violation of section 135C.25 for not having a resident advocate committee if new appointments cannot be made as documented in accordance with this subsection.

3. A An elder group home or long-term care facility shall disclose the names, addresses, and phone numbers of a resident's family members, if requested, to a resident advocate committee member, unless permission for this disclosure is refused in writing by a family member.

Sec. 9. Section 235B.6, subsection 2, paragraph e, subparagraph (10), Code Supplement 2009, is amended to read as follows:

(10) The state or a local long-term care resident's

advocate if the victim resides in a long-term care facility or the alleged perpetrator is an employee of a long-term care facility.

Sec. 10. REPEAL. Section 231.43, Code Supplement 2009, is repealed.

JOHN P. KIBBIE
President of the Senate

PATRICK J. MURPHY
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2263, Eighty-third General Assembly.

MICHAEL E. MARSHALL
Secretary of the Senate

Approved _____, 2010

CHESTER J. CULVER
Governor